

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 30, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP2000

Cir. Ct. No. 2012CV418

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

COLONIAL SAVINGS, F.A.,

PLAINTIFF-APPELLANT,

V.

KEVIN A. FIELDS,

DEFENDANT-RESPONDENT,

**ASSOCIATED BANK, N.A. P/K/A FIRST FEDERAL CAPITAL BANK AND
STATE OF WISCONSIN,**

DEFENDANTS.

APPEAL from a judgment of the circuit court for Rock County:
DANIEL T. DILLON, Judge. *Affirmed.*

Before Lundsten, Higginbotham and Kloppenburg, JJ.

¶1 PER CURIAM. This case involves Colonial Savings’ second attempt to foreclose on property owned by Kevin Fields. The circuit court concluded that this second attempt is barred by the doctrine of claim preclusion. We agree with the circuit court and affirm.

¶2 On February 16, 2011, in the prior action, Colonial Savings filed a foreclosure complaint against Fields alleging that Fields had defaulted on his obligations under a note and mortgage held by Colonial Savings. Following a trial to the court, the circuit court determined that Colonial Savings had failed to meet its burden of proof with respect to a disputed issue regarding the assignment of the note. More specifically, the court concluded that Colonial Savings failed to prove it had been assigned the note by an entity having the authority to make the assignment. Consequently, the court dismissed the 2011 action.

¶3 Colonial Savings did not appeal the dismissal or move to reopen the judgment. Instead, Colonial Savings, now apparently armed with better proof, filed the action that underlies this appeal. Colonial Savings’ new foreclosure complaint, by attaching assignment documents not submitted in the prior case, purported to demonstrate that Colonial Savings could remedy its proof problem. The circuit court applied the doctrine of claim preclusion and dismissed the complaint. We agree with the circuit court’s analysis.

¶4 Under the doctrine of claim preclusion, “a final judgment is conclusive in all subsequent actions between the same parties [or their privies] as to all matters which were litigated or which might have been litigated in the former proceedings.” *Northern States Power Co. v. Bugher*, 189 Wis. 2d 541, 550, 525 N.W.2d 723 (1995) (quoted source and internal quotation marks omitted). There are three elements that must be present to establish claim

preclusion: “(1) an identity between the parties or their privies in the prior and present suits; (2) an identity between the causes of action in the two suits; and, (3) a final judgment on the merits in a court of competent jurisdiction.” *Id.* at 551. Whether claim preclusion applies to a particular factual scenario is a question of law that we review independently. *Id.*

¶5 Here, it is undisputed that there is an identity between the parties in both actions and a final judgment on the merits of the first action in a court of competent jurisdiction. Colonial Savings argues, however, that claim preclusion is inapplicable because there is no identity between the causes of action in the two suits. We disagree. Both actions sought foreclosure on the same note and mortgage from December 2004. Colonial Savings’ second action, indicating that Colonial Savings has additional proof of the assignment of mortgage, does not alter the cause of action. “A party is not entitled to rekindle litigation when it has imperfectly asserted a claim against a party in a previous action.” *Wisconsin Pub. Serv. Corp. v. Arby Const., Inc.*, 2012 WI 87, ¶43, 342 Wis. 2d 544, 818 N.W.2d 863. Because Colonial Savings merely attempted to prove in the second action what it failed to prove in the first, the circuit court properly dismissed the complaint as barred by claim preclusion.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2011-12).

